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IDT Corporation
520 Broad Street
Newark, New Jersey 07102-3111

October 12, 2006

Marlene H. Dortch
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Ex Parte Submission – Request for Review of Decision of the Universal Service Administrator by IDT Corporation*, USAC Audit Report No. CR2005CP005; CC Docket No. 96-45

Dear Secretary Dortch:

IDT Corporation (“IDT” or “the Company”) hereby files this protest letter in the above-captioned proceeding. Specifically, IDT protests that it is being forced to remit payments of [REDACTED], [REDACTED], [REDACTED], and [REDACTED],¹ or face unreasonable late payment penalties of approximately [REDACTED] while its *Request for Review*² is pending. Submission of these payments should not be interpreted as acceptance of the Universal Service Administrative Company’s (“USAC”) Audit Report findings or USAC’s subsequent actions. IDT continues to dispute the Audit Report and also disputes USAC’s authority to take the following actions: (1) file an FCC Form 499-A on behalf of the Company; (2) without the Company’s consent, use the unauthorized, unsigned Form 499-A as the basis for calculating USF contributions; and (3) forward the information from the unauthorized, unsigned Form 499-A to the FCC for the purpose of Regulatory Fee calculations. Finally, IDT requests that the Commission return and direct USAC to return the aforementioned payments to IDT and permit the Company to place the payments in escrow until IDT’s appeal has been resolved. Once the *Request for Review* has been resolved

¹ These amounts represent Universal Service Contributions for Calendar Year 2002, 2003 and 2004 and the FCC Regulatory Fee for Calendar Year 2004, respectively. IDT anticipates that the USF payments shall be made on or before October 13, 2006 and the FCC Regulatory Fee payment shall be made on or before October 23, 2006.

² *Request for Review of Decision of the Universal Service Administrator by IDT Corporation*, Request for Review of Decision of the Universal Service Administrator by IDT Corporation, CC Docket No. 96-45, USAC Audit Report No. CR2005CP005 (April 10, 2006).

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and is no longer subject to appeal, IDT will remit payment, if any is due, immediately.

The history of IDT's USAC audit and the substantive issues raised by the audit are explained in the Company's *Request for Review*. Subsequent to the release of the Audit Report, USAC filed on IDT's behalf and without its consent FCC Form 499-As for CY 2002, 2003 and 2004. The USAC-filed forms, which were subsequently revised by USAC once, twice and twice, respectively, reflect USAC's positions in the audit, although the final figures in the most recent Form 499-A filings (the status of which is listed on USAC's website as "Estimated – Incomplete") do not necessarily conform to the figures listed in the Audit Report.

IDT has not signed and cannot sign any of the USAC-filed Forms, because the Forms require that an officer of the Company certify that:

I have examined the foregoing report and, to the best of my knowledge, information and belief, all statements of fact contained in this Worksheet are true and that said Worksheet is an accurate statement of the affairs of the above-named company for the previous calendar year. In addition, I swear, under penalty of perjury, that all requested identification registration information has been provided and is accurate.³

Because IDT does not agree with USAC's treatment of IDT's revenue, the Worksheet is not accurate and, hence, IDT cannot permit an officer to sign it. Accordingly, until the Commission acts on IDT's *Request for Review* and confirms or denies IDT's reporting methodology, IDT cannot permit an officer to sign the forms. Without a Company-certified FCC Form 499-A to serve as the basis for calculation, USAC has created *de facto* Commission policy for determining USF and FCC Regulatory Fee contributions.⁴

IDT has previously raised concerns before the Commission about USAC's internal guidelines improperly becoming *de facto* Commission policy.⁵ USAC's actions subsequent to the Audit Report present a perfect

³ See, 2006 FCC Form 499-A (Telecommunications Reporting Worksheet) at Line 606, <http://www.fcc.gov/Forms/Form499-A/499a0706.pdf> (Last viewed October 12, 2006).

⁴ Although Rule 54.709(d) permits USAC to estimate contributions when a carrier fails to file a Form 499, current rules do not permit USAC to estimate contributions in this circumstance, where IDT has filed its Forms 499 that were subsequently audited by USAC.

⁵ ("IDT has observed that USAC, in trying to find a way to cope with the enormous responsibilities of managing the USF, has created internal guidelines. The problem

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example of USAC internal guidelines becoming *de facto* Commission policy. For example, USAC is not authorized to file a FCC Form 499-A on behalf of IDT. Moreover, USAC is not authorized to use or submit unsigned, incomplete 499s to the FCC (or other entities that administer regulatory funds under the Commission's purview) as the basis of regulatory fee calculations. Doing so is likely to lead to confusion, inconvenience and hardship for affected companies in the event of subsequent revisions to the USAC-filed FCC Form 499-As. Indeed, IDT and its attorneys continue to engage USAC in discussions about the proper treatment of some of the revenue items which could have considerable impact on the final fee amounts due under the Audit.

Ultimately, as a result of the USAC-filed Worksheet, IDT is placed in a precarious position: either pay the amounts in question and lose the value of the money – which we estimate at [REDACTED] annually - until a decision by the Commission on our *Request for Review* has been won or risk 7% annual late penalty on the USF payment and 25% late penalty on the FCC Regulatory Fee. These penalties add up to approximately [REDACTED] per year and thus present an unacceptable financial burden to the Company. IDT has chosen to remit the payments, under protest, as part of a good faith effort to work with the Commission and USAC. We respectfully request that the Commission show an equal amount of good faith in working with IDT. Specifically, we request that the Commission resolve our *Request for Review* in an expeditious manner. Furthermore, until such resolution, IDT requests that the Commission return the above-mentioned payments to the Company and direct USAC to do the same. In return, IDT will hold the disputed amount in escrow and remit payment, if any is due, once the *Request for Review* has been resolved and is no longer subject to appeal. No harm would come from holding the payments in escrow: all payments are for prior years and, as such, the current and future funding years for the USF and the Commission are not implicated. Moreover, the Commission is assured of payment in the event IDT loses appeal. Such an agreement eliminates the practical impact of USAC's impermissible actions and ameliorates the substantial harm IDT faces by remitting payment prior to the resolution of

arises when these internal policies begin to affect the way USAC interacts with contributors, especially when USAC begins to make demands of contributors that are clearly not delineated in any FCC rules or regulations. It is at this point that the internal guidelines become *de facto* policy, and USAC begins to exceed the authority granted to it by the FCC. The FCC's rules clearly state that USAC 'may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress.' (*Footnote omitted*)” *Comments of IDT Telecom, Inc., Comprehensive Review of the Universal Service Fund Management, Administration and Oversight*, WC Docket No. 05-195 (October 18, 2005) at 3.

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the *Request for Review* and the filing of Company-authorized FCC Form 499-As.

If you have any questions or concerns, please do not hesitate to contact me at (973) 438-4854 or Carl.Billek@corp.idt.net.

Sincerely,

/s/ Carl Wolf Billek

Carl Wolf Billek
Senior Regulatory

Counsel

IDT Corporation

c: Douglas Orvis, Bingham McCutchen LLP (Unredacted Version)
Jeffrey Mitchell, Universal Service Administrative Company
(Unredacted Version)